Editor's note: Reconsideration granted; decision affirmed as modified -- See 78 IBLA 327 (Jan. 24, 1984)

DOYON, LIMITED
MTNT, LIMITED

IBLA 82-1120
ANCAB VLS 79-27 Decided August 10, 1983

Appeal from decisions of the Alaska State Office, Bureau of Land Management, approving conveyances of Native land selections under Alaska Native Claims Settlement Act without adjudication or identification of unpatented mining claims located upon the selected lands (village land selections F-14889-A, F-14906-A, F-14942-A, and F-14945-A).

Affirmed.

1. Alaska: Mining Claims--Alaska Native Claims Settlement Act: Conveyances: Regional Conveyances--Alaska Native Claims Settlement Act: Conveyances: Village Conveyances: Regional Conveyances

   Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed, or to search state records to ascertain the existence of unpatented mining claims.

APPEARANCES: James Q. Mery, Esq., for appellant Doyon, Limited; Larry A. Wiggins, Esq., for appellant MTNT, Limited; Elizabeth J. Barry, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On March 30, 1979, the Bureau of Land Management (BLM), issued decisions approving conveyance of the surface estate in land selected by appellant, MTNT, Limited (MTNT), in village land selections F-14889-A, F-14906-A, F-14942-A, and F-14945-A, and approved conveyance of the subsurface estate to Doyon, Limited (Doyon), pursuant to section 14 of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. § 1613 (1976). The decisions do not identify or adjudicate any unpatented mining claims which

may possibly be located within the selections. On appeal Doyon has argued, first before the Alaska Native Claims Appeal Board (ANCAB) 1/ and now before this Board, that, under the circumstances described, the refusal to identify the existence of possible mining claims in conveyance instruments used by BLM to convey title to Native corporations is error. As a consequence, Doyon asserts, four issues are raised which should be decided in this appeal: (1) Whether BLM has a duty to identify in the conveyance instruments by location and BLM file number all facially valid unpatented mining claims which encumber land being conveyed to Doyon; (2) whether BLM has a duty to exclude from conveyance to the village corporation and Doyon lands containing unpatented claims upon which BLM has suspended review pending reconsideration of the Montana U.S. District Court's decision in Rogers v. United States, CV-80-114-H (D. Mont. June 28, 1982) (petition for reconsideration denied June 24, 1983); (3) whether BLM has a duty to search state records for mining claim filings not recorded pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), Act of October 21, 1976, 43 U.S.C. § 1744 (1976), and to include findings based upon the search of state records in the conveyance documents furnished; and (4) whether the provisions of 43 CFR 2650.3-2(c) which allow a miner to apply for patent to land within Native selections after December 18, 1976, under certain circumstances, is invalid for lack of a statutory basis. MTNT generally joins in these contentions.

BLM contends it is not required to identify prior to conveyance any unpatented mining claims which may be located on selected lands. BLM also takes the position that neither ANCSA nor FLPMA require the identification by BLM of unpatented mining claims located on the selected lands. BLM urges that such identification requires an adjudication by BLM which is not proper under existing Federal law.

The disposition of this appeal is controlled by the Board's decision in Doyon, Limited, 74 IBLA 139, 90 I.D. (1983), involving a nearly identical factual situation and identical legal arguments. Exactly the same four contentions on appeal were decided adversely to appellants in Doyon, Limited, supra, based upon analysis of Alaska Miners v. Andrus, 662 F.2d 577 (9th Cir. 1981), and the provisions of sections 14(g) and 22(c) of ANCSA, 43 U.S.C. §§ 1613, 1621 (1976). Thus, Doyon, Limited, held at 74 IBLA 148, that:

> Since section 14(g) does not concern mining claims, it cannot serve as a basis for requiring the Department to identify mining claims. Even if section 14(g) were applicable, it would be improper to identify a mining claim whose validity had not been determined. In order for a mining claim to constitute a valid existing right, it must be established that a mining claim not

1/ ANCAB was abolished by Secretarial Order No. 3078 dated Apr. 29, 1982, effective June 30, 1982, which transferred all responsibilities delegated to ANCAB to the Interior Board of Land Appeals (IBLA). An interim rule published June 18, 1982, enlarged IBLA's scope of authority to include jurisdiction to make final Departmental decisions in appeals relating to land selections arising under ANCSA. 43 CFR 4.1(b)(3)(i), 43 FR 26,392 (June 18, 1982).

> only was located prior to the date of the withdrawal and maintained in accordance with the requirements of the mining laws, it must also be established that a valuable mineral deposit had been discovered on the claim prior to the withdrawal. See United States v. Beckley, 66 IBLA 357 (1982). It would be improper to identify a mining claim as a valid existing right unless the issue of discovery of a valuable mineral deposit is fully adjudicated. Since the court in Alaska Miners, supra, held that the Department is not required to adjudicate the validity of mining claims, it necessarily follows that the Department cannot be required to identify them as valid existing rights in the absence of proof of a discovery of a valuable mineral deposit.
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> Appellant's contention that section 22(c) requires identification of unpatented mining claims is incorrect for the same reasons. That section protects possessory rights arising only from valid mining claims initiated before August 13, 1971, so a claim cannot be identified as protected by section 22(c) without adjudication of its validity. Since the Department is not required to adjudicate the validity of mining claims on lands conveyed to a regional corporation, there is no basis for identifying them in a conveyance.
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> * * * The only other argument appellant makes in support of such identification is the need to convey clear title. Appellant's concern about this is belied by appellant's failure to exclude claims from its selection application or seek adjudication of those claims by the procedures provided by Departmental regulations. We hold that BLM is not required to identify or adjudicate unpatented mining claims on the land conveyed since no contest has been filed.

Similarly, appellants' contention that the decision in Rogers, supra, can in any way affect the disposition of this appeal is groundless, as is the claim that BLM has a duty to search state records for mining claims unrecorded under section 314 of FLPMA. As this Board observed in Doyon, Limited, 74 IBLA at 149, 150, the ultimate resolution of the Rogers case can have no effect upon this appeal. If on appeal the court affirms the District Court decision and holds that the Department improperly declared the claims abandoned and void, the claims will have the same status as other unpatented claims and would be subject to exclusion from appellants' conveyance only if appellant had excluded the claims in its conveyance application or if a patent application had been filed. On the other hand, if the court reverses and finds such claims to be properly declared abandoned, there would be no basis for identifying or excluding such abandoned claims from appellant's conveyance.

Appellants' contention that BLM has a duty to search the State of Alaska records for mining claims affecting the selections involved herein is without merit. Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), provides that failure to record such a claim with BLM "shall be deemed conclusively to constitute an abandonment" of the claim. A principal purpose of this

statute was to obviate the need for BLM to make the search appellant would require of it. Finally, appellants' contention that 43 CFR 2650.3-2(c) has any application to this pending appeal is not shown by the record on appeal. As was held in Doyon, Limited, supra at 151, this Board will not render an advisory opinion concerning the application of 43 CFR 2650.3-2(a), where the application of that regulation is not involved in a pending appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

Bruce R. Harris
Administrative Judge

James L. Burski
Administrative Judge